

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDDIE LUCHES LEE,

Petitioner,

v.

CASE NO. 04-CV-74632-DT
HONORABLE VICTORIA A. ROBERTS

BARRY DAVIS,

Respondent.

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**ORDER DENYING MOTIONS FOR A CERTIFICATE OF APPEALABILITY
AND FOR LEAVE TO PROCEED ON APPEAL *IN FORMA PAUPERIS***

Petitioner has filed a motion for a certificate of appealability and a motion for leave to proceed on appeal *in forma pauperis* concerning this Court's denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Before Petitioner may appeal this Court's dispositive decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). The Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); *In re Certificates of Appealability*, 106 F.2d 1306, 1307 (6th Cir. 1997).

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

“A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner’s claims. *Id.* at 336-37.

Having reviewed the matter, and for the reasons stated in the Court’s prior opinion, the Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right as to his other acts evidence claim (habeas claim I), his identification claim (habeas claim II), and his jury composition claim (habeas claim III). Petitioner’s first claim is not cognizable upon habeas review and the factual record belies his second and third claims. Accordingly, the Court **DENIES** the motion for a certificate of appealability. Given this determination, the Court also **DENIES** the motion for leave to proceed on appeal *in forma pauperis*.

IT IS SO ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: March 2, 2006

The undersigned certifies that a copy of this document was served on the attorneys of record and pro se petitioner by electronic means or U.S. Mail on March 2, 2006.

s/Carol A. Pinegar
Deputy Clerk